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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,832	09/17/2003	Donald E. Weder	8403.952	6841
30589	7590	09/28/2004	EXAMINER	
DUNLAP, CODDING & ROGERS P.C. PO BOX 16370 OKLAHOMA CITY, OK 73113			PALO, FRANCIS T	
		ART UNIT	PAPER NUMBER	
		3644		

DATE MAILED: 09/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/666,832	WEDER, DONALD E.	
	Examiner Francis T. Palo	Art Unit 3644	<i>MW</i>

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 17 September 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-29 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 17 September 2003 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9/17/03</u> | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims.

Therefore, the embodiments cited in the claims must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

- Specifically; the tapered shaped sleeve having a banding element as cited in instant independent claims 1 and 16 are not depicted (the sleeves depicted in Figures 14-17 are not tapered).
- The embodiment of instant independent claims 1 and 16 are not depicted as further limited by instant dependent claims 8 and 22 respectively (tapered sleeve having a side gusset).

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency.

Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The abstract of the disclosure is objected to because in the last sentence of the abstract; "pot by a crimping" should be --pot by crimping--.

Correction is required. See MPEP § 608.01(b).

The disclosure is objected to because of the following informalities:

Paragraph [0001] should be updated to reflect the patented status of application 10/303,994.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. **Claims 1, 5, 6, 8, 10-12, 14-16, 20-22, 24-26, 28 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by FR1376047 (1964).**

Regarding independent claims 1 and 16:

The independent claims differ from one another in that the sleeve of claim-1 is cited as having a lower end, whereas the sleeve of claim-16 is cited as having a closed, non-gusseted lower end (claim-1 being broader in scope).

The French reference depicts in Fig.-5 a pot covering comprising:
a pot as cited, a banding element as cited and a preformed sleeve having a tapered shape (presumably initially flattened) and closed, non-gusseted lower end; the plant package as depicted in Fig.-5 is readable as dimensioned in the instant independent claims (a direct measurement of the pot rim diameter (1.3125 in.) and sleeve diameter (1.5625 in.) adjacent the pot rim, yields a 10% diameter differential, as cited in the instant claims).

The method steps of the instant independent claims are therefore readily apparent from the plant package depicted in Fig.-5 of the French reference.

Regarding repeating claims 5 and 20:

The discussion above regarding independent claims 1 and 16 is relied upon.

A decorative skirt portion as cited is apparent in the figures of the French reference, (the term decorative being a subjective limitation).

Regarding repeating claims 6 and 21:

The discussion above regarding independent claims 1 and 16 is relied upon.

As discussed above, the sleeve depicted in the French reference is capable of the inner measurement as cited in the instant claims.

Regarding repeating claims 14 and 28:

The discussion above regarding independent claims 1 and 16 is relied upon.

As discussed above, the sleeve depicted in the French reference is capable of the inner measurement as cited in the instant claims.

Regarding repeating claims 8 and 22:

The discussion above regarding independent claims 1 and 16 is relied upon.

A side gusset as cited, is apparent in Figures 1 and 4 of the French reference.

Regarding repeating claims 10 and 24:

The discussion above regarding independent claims 1 and 16 is relied upon.

The securing element as depicted in Figure-5 of the French reference is readable on the selections cited in the instant claims.

Regarding repeating claims 11 and 25:

The discussion above regarding independent claims 1 and 16 is relied upon.

The securing element as depicted in Figure-5 of the French reference is positioned as cited in the instant claims.

Regarding repeating claims 12 and 26:

The discussion above regarding independent claims 1 and 16 is relied upon.

The securing element as depicted in Figure-3 of the French reference is positioned as cited in the instant claims.

Regarding repeating claims 15 and 29:

The discussion above regarding independent claims 1 and 16 is relied upon.

The French reference depicts a plant package as cited in the instant claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 2-4, 9, 17-19 and 23 are rejected under 35 U.S.C. 103(a)

as being unpatentable over

FR1376047 (1964) in view of Charbonneau (US Des. 259,333).

Regarding repeating claims 2 and 17:

The discussion above regarding independent claims 1 and 16 is relied upon.

The French plant package as depicted is absent a detachable upper portion as cited in the instant claims.

Charbonneau with an effective date of 1964, is relied upon for the teaching of a tapered detachable upper sleeve portion, as cited.

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to have modified the French sleeve to include a detachable upper portion as cited and as taught by Charbonneau, for the known advantages of that feature.

Regarding repeating claims 3 and 18:

The discussion above regarding claims 2 and 17 is relied upon.

Depicted in the French reference is an upper portion sized as cited in the instant claims.

Regarding repeating claims 4 and 19:

The discussion above regarding claims 2 and 17 is relied upon.

Depicted in Figure-4 of the French reference is a solid black band at the uppermost upper end of the sleeve, which is capable of adaptation to support the sleeve as cited in the instant claims.

Regarding repeating claims 9 and 23:

The discussion above regarding claims 2 and 17 is relied upon.

Depicted in Figure-4 of the French reference is a solid black band at the uppermost upper end of the sleeve, which is readable on the sealed upper end, as cited in the instant claims (presumable, the sleeve would have to be opened to facilitate insertion of the plant assembly).

3. **Claims 7, 13 and 27 are rejected under 35 U.S.C. 103(a)**
as being unpatentable over FR1376047 (1964)
in view of Weder (US 5,581,938).

Regarding **claim-7**:

The discussion above regarding independent claim-1 is relied upon.

The French reference while depicting a gusset in the sleeve side, does not depict a gusset in the sleeve bottom (although a side gusset could be readable as a gusset in a lower portion as cited).

Weder '938 with an effective date of 1992, is relied upon for the teaching of a gusset in a lower portion of a sleeve as depicted in Figure-5, and further recited in claim-2 of the reference.

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to have modified the French sleeve to include a gusset in the lower portion as cited and as taught by Weder '938, for the known advantages of that feature; additionally, it has been held that duplication of features requires only ordinary skill in the art.

Regarding repeating claims 13 and 27:

The discussion above regarding independent claims 1 and 16 is relied upon.

The French reference while depicting a securing element, does not depict a pre-attached securing element as cited in the instant claims.

Weder '938 with an effective date of 1992, is relied upon for the teaching of a pre-attached securing element as recited in claims 8 and 9 of the Weder reference.

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to have modified the French sleeve to include a pre-attached securing element as cited and as taught by Weder '938, for the well-known advantages of that feature.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-29 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over independent claims 27 and 39 of U.S. Patent No. 6,662,496.

Although the conflicting independent claims 27 and 39 are not identical to the instant independent claims 1 and 16, they are not patentably distinct from each other because the method steps of the instant independent claims are fully recited in the conflicting independent claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Celtorius '436 teaches covering a floral grouping (*Flower Bag*).

Barry '186 teaches an oversize flexible vase.

Larsen '697, Weder '405 and Joergensen DE '281 teach oversized sleeves.

Thompson '108, Parker '822 and Griffon '925 teach sleeve supports.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Francis T. Palo whose telephone number is 703-305-5595. The examiner can normally be reached on M-Tu., Th.-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 703-305-7421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Francis T. Palo
Francis T. Palo
Examiner
Art Unit 3644